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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. ) 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC., et al, )

Defendants. )

- - - - -

VOLUME II OF THE VIDEOTAPED  
DEPOSITION OF BERTON FISHER, PhD, produced as a  
witness on behalf of the Defendants in the above  
styled and numbered cause, taken on the 4th day of  
September, 2008, in the City of Tulsa, County of  
Tulsa, State of Oklahoma, before me, Lisa A.  
Steinmeyer, a Certified Shorthand Reporter, duly  
certified under and by virtue of the laws of the  
State of Oklahoma.

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A P P E A R A N C E S

FOR THE PLAINTIFFS:	Mr. Richard Garren Attorney at Law 502 West 6th Street Tulsa, OK 74119
FOR TYSON FOODS:	Mr. Robert George Attorney at Law 2210 West Oaklawn Drive Springdale, AR 72762
FOR CARGILL:	Ms. Theresa Hill Attorney at Law 100 West 5th Street Suite 400 Tulsa, OK 74103
FOR SIMMONS FOODS:	Mr. John Elrod Attorney at Law 211 East Dickson Street Fayetteville, AR 72701
FOR PETERSON FARMS:	Mr. Scott McDaniel Attorney at Law 320 South Boston Suite 700 Tulsa, OK 74103
FOR GEORGE'S:	Mr. Woodson Bassett Attorney at Law 221 North College Fayetteville, AR 72701
FOR CAL-MAINE:	Mr. Robert Sanders Attorney at Law 2000 AmSouth Plaza P. O. Box 23059 Jackson, MS 39225 (Via phone)

**TULSA FREELANCE REPORTERS**  
**918-587-2878**

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-and-  
Mr. Robert Redemann  
Attorney at Law  
1437 South Boulder  
Tulsa, OK 74119  
(Via phone)  
Ms. Jennifer Griffin  
Attorney at Law  
314 East High Street  
Jefferson City, MO 65109  
(Via phone)

FOR WILLOW BROOK:

1 (Whereupon, the deposition began at  
2 9:00 a.m.)

3 VIDEOGRAPHER: We are now on the Record for  
4 Volume II of the deposition of Berton Fisher. Today  
5 is September 4th, 2008. The time is 9:00 a.m. 09:00AM  
6 Would counsel please identify themselves for the  
7 Record.

8 MR. GARREN: Richard Garren for the State  
9 of Oklahoma.

10 MR. GEORGE: Robert George for the Tyson 09:00AM  
11 defendants.

12 MR. McDANIEL: Scott McDaniel for Peterson  
13 Farms, Inc.

14 MR. ELROD: John Elrod for Simmons.

15 MR. BASSETT: Woody Bassett for the 09:00AM  
16 George's defendants.

17 MS. HILL: Theresa Hill for the Cargill  
18 entities.

19 VIDEOGRAPHER: Thank you.

20 BERTON FISHER, PhD,  
21 having first been duly sworn to testify the truth,  
22 the whole truth and nothing but the truth, testified  
23 as follows:

24 CONTINUED DIRECT EXAMINATION

25 BY MR. GEORGE: 09:00AM

1 that these are written by Soil Conservation Service  
2 employees. Now, if there are state employees --  
3 that's a conclusion of law as to what I think,  
4 whether it's a state sponsored plan or not, but  
5 it's -- the animal waste management plans tend to be 01:22PM  
6 written by extension people.

7 Q All right. I won't debate with you who writes  
8 them. Are you aware of the fact that there are  
9 animal waste management plans that have been written  
10 for landowners in the Illinois River watershed in 01:22PM  
11 Oklahoma that authorize the land application of  
12 poultry litter?

13 MR. GARREN: Object to form.

14 A Okay. I'll recognize -- with respect to your  
15 question, I would agree that there are nutrient 01:23PM  
16 management plans or animal waste management plans  
17 that have been written that pertain to lands within  
18 the Illinois River watershed that specify the  
19 circumstances of disposal of litter on people's  
20 lands. 01:23PM

21 Q Okay, and those plans would dictate the  
22 allowable rate at which poultry litter can be land  
23 applied --

24 MR. GARREN: Object to form.

25 Q -- on specific fields? 01:23PM

1 A Yes.

2 Q And previously my question was sort of framed  
3 within the context of the state of Oklahoma, but  
4 those plans, nutrient management plans, are -- have  
5 also been written and issued to landowners on the  
6 Arkansas side of the basin?

01:23PM

7 A I have seen nutrient management plans on the  
8 Arkansas side of the basin. It's my understanding  
9 that for -- until very recently they were not  
10 required.

01:24PM

11 Q By whom?

12 A Pardon?

13 Q Weren't required by --

14 A Weren't required by the State of Arkansas.

15 Q Do you know the extent to which the poultry  
16 companies or any poultry company has required its  
17 contract growers to pursue and obtain a nutrient  
18 management plan notwithstanding state requirements?

01:24PM

19 A I know that there are some instances in which  
20 contract growers have had that requirement.

01:24PM

21 Q Is that the extent of your knowledge, what you  
22 just stated?

23 A The extent of my knowledge as I sit here  
24 today. I've read a ton of records. I think there  
25 are requirements by some contract growers that --

01:24PM

1 for nutrient management plans for the growers.

2 Q Okay.

3 A I don't recall when that was first  
4 implemented.

5 Q All right. The -- now, back to where I 01:25PM

6 started a few moments ago, would you agree that one  
7 reason poultry litter is land applied near where  
8 it's generated in the Illinois River watershed is  
9 because there are landowners that have animal waste  
10 management plans that allow poultry litter to be 01:25PM  
11 land applied in those areas?

12 A Well, I'm not sure that it requires an animal  
13 waste management plan, but there are individuals who  
14 would desire to have it applied.

15 Q All right. Let me -- then tell me, do you 01:25PM

16 know whether all land application of poultry litter  
17 in the Illinois River watershed today requires the  
18 applicator to be licensed?

19 MR. GARREN: Object to form.

20 A Okay. I think we need to break that down into 01:25PM

21 by state.

22 Q If you want to answer by state, that's fine.

23 A With respect to Oklahoma, commercial  
24 applicators need to be licensed is my understanding,  
25 and if you are applying it to your own land, you 01:26PM

1 have to make an application report. I'm not sure of  
2 the licensure requirements if you are applying waste  
3 to your own land.

4 Q Okay.

5 A In Arkansas, I am not familiar enough with 01:26PM  
6 that state's regulatory structure to have an  
7 opinion, but it's possible.

8 Q Is all the poultry litter that is applied in  
9 this day and time in the Illinois River watershed  
10 subject to rules or regulations in either Oklahoma 01:26PM  
11 or Arkansas depending on where the land is?

12 MR. GARREN: Object to form.

13 A I believe that at the present time that is  
14 true.

15 Q All right. Are you aware of any circumstance, 01:27PM  
16 Dr. Fisher, where poultry litter has been land  
17 applied in the Illinois River watershed in  
18 violations of the provisions of that landowner's  
19 nutrient management plan or animal waste management  
20 plan? 01:27PM

21 MR. GARREN: Object to form.

22 A I know of none, but there's also no way of  
23 truly checking that.

24 Q Now, in your report at Page 13 where you go  
25 into your history discussion of the defendants, you 01:27PM